

March 10, 2008

Alvin Maynor, Chairman
Board of Trustees
Bamberg School District Two
62 Holly Avenue
Denmark, South Carolina 29042

Dear Mr. Maynor:

You have requested an opinion of this office regarding recent action by the Denmark-Olar School District Two Board of Trustees ("the Board") regarding their per diem pay. You referenced the provisions of Act No. 157 of 1995 which states that the members of the Board "...shall receive annual compensation of one thousand two hundred dollars for their service on...(the Board)...during a particular calendar year." You also referenced the provisions of S.C. Code Ann. § 59-1-350 which states that

[m]embers of the county board of education or board of trustees may serve without pay. Each member of the board may receive a per diem for attendance at board meetings and may be paid mileage to and from such meetings. No member may receive per diem and mileage unless in actual attendance upon a meeting of the Board....

You indicated that a motion was passed in December, 2007 that would increase the per diem of members of the Board prospectively beginning January, 2008 during the terms of the current board members. However, prior to distribution of the per diem in accordance with the motion, the Board has requested an opinion of this office on the following questions:

1. May the Board members receive compensation under Act No. 157 and per diem under Section 59-1-350? If not, which provision is controlling?
2. If the Board members may receive per diem in addition to compensation, is there a limit on the amount of per diem that the Board may receive?
3. May an increase take effect during the terms of the current Board members?

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4. May the increase take effect beginning January, 2008, although the Board has withheld further action (i.e. distribution of checks) pending the outcome of this opinion request?

Section 59-1-350 which provides a per diem for members of a board of trustees was enacted in 1974. Act No. 157 providing annual compensation of \$1200.00 was enacted in 1995. As to the issue of whether there is a conflict between the two provisions, rules of statutory construction must be considered. The primary goal is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). As stated in an opinion of this office dated October 5, 2000, generally,

...even though the Legislature may not expressly provide for repeal of certain statutes, such can be accomplished by implication. Repeal by implication is not favored under the law. In the Interest of Shaw, 274 S.C. 534, 265 S.E.2d 522 (1980). However, “where two legislative acts are repugnant to, or in conflict with each other, the last one passed, being the latest expression of the legislative will, will, although it contains no repealing clause, govern, control, or prevail, so as to supersede and impliedly repeal the earlier act to the extent of the repugnancy.” City of Newberry v. Public Service Commission of South Carolina, 287 S.C. 404, 407, 339 S.E.2d 124, 126 (1986). The Court in City of Newberry v. PSC also stated that “[t]he case law of this State is clear that when there is a conflict between statutory provisions, the later enacted legislation prevails.” Id. Moreover, “[w]here the later of two acts covers the whole subject matter of the earlier one, not purporting to amend it, and plainly shows that it was intended to be a substitute for the earlier act, such later act will operate as a repeal of the earlier one, though the two are not repugnant.” Independence Ins. Co. v. Independent Life and Acc. Ins. Co., 218 S.C. 22, 61 S.E.2d 399, 404 (1950).

An opinion of this office dated September 6, 1989 stated that

[o]rdinarily a statute which deals with the common subject matter in a minute and particular way will prevail over one of a more general nature; and a legislative intent clearly expressed in a special act will prevail over any implication which can be gathered from a general statute...

As stated in another opinion of this office dated August 15, 1997, “[t]he last act of the Legislature is the law.”

In the situation addressed by you, there is an inconsistency between Section 59-1-350, a general law provision which provides a per diem for members of a board of trustees and Act No. 157, a special act for the Board of Trustees of Bamberg-Ehrhardt School District One and Denmark-

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Olar School District Two, which provides annual compensation to members of those boards of trustees. Section 59-1-350 was enacted in 1974 while Act No. 157 was enacted in 1995. Consistent with the above, in the opinion of this office, since both provisions deal with payment to members of a board of trustees, the provisions of Act No. 157 would appear to control as it is last in time and acts as a substitute for Section 59-1-350. Act No. 157 may also be construed as a special act prevailing over a more general act. Therefore, in the opinion of this office, members of the Denmark-Olar School District Two Board of Trustees should receive compensation under Act No. 157 but not receive any per diem under Section 59-1-350. Inasmuch as no per diem is authorized, a response to your remaining questions appears unnecessary.

If there are any questions, please advise.

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General